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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,849	11/07/2000	Alan S. Fisher	MR2909-2/C	8858
21186	7590	07/18/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402-0938			CAMPEN, KELLY SCAGGS	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 07/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/706,849

Applicant(s)

FISHER ET AL.

Examiner

Kelly Campen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/10/03, 6/2/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because it refers to purported merits or speculative applications of the invention. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

Claim Objections

Claim 21 is objected to because of the following informalities: a typographical error inline 1 of the claim as "lid" should read "bid". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 18-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of Nahan (US 5664111).

Specifically as to 18, 26, 35, 44, Woolston et al. disclose a computer system for conducting an auction through a computer network, the system comprising: a posting means for

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posting to a computerized merchandise catalog information that is accessible through the computer network, the information describing each lot in plurality of lots available for auction, each lot including at least one item, the posting means being available to add a lot for auction during an auction of another lot, wherein the information related to items in each lot is automatically updated in the merchandise catalog as items in each lot are made available for auction (see column 6, lines 1-44); a bid receiving means for receiving a bid for at least a portion of a lot of the plurality of lots (see figure 4) and a bid categorizing means for determining whether the bid is successful or unsuccessful (see column 4, lines 30-67) but does not disclose a bid validation means for examining the bid. It would have been obvious of one of ordinary skill in the art at the time the invention was made to use the transaction clearing means as a way of validating a bid (see column 5, lines 20 and column 12 included verification means in lines 20-50 and figure 7). If the payment does not clear, then the bid is not valid and does not go through the system.

Specifically as to claim 19, 27, 36, 45 an auction selection means for associating each lot with an auction format (see col. 5, line 48- column 6, line 44).

Specifically as to claim 20, 28, 37, 46, an auction format is selected from the group comprising: Dutch auction, standard auction, progressive auction, and buy or bid auction are all common and well known types of auctions. Examiner takes Official Notice that it is notoriously well known to use Dutch auction, standard auction, progressive auction, and buy or bid auctions when auctioning goods or services. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select from Dutch auction, standard auction, progressive

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auction, and buy or bid auction as a type of auction as these are all well known types of auctioning formats in use.

Specifically as to claim 21, 29, 38, 47, bid is received from a bid form (see figure 13).

Specifically as to claim 22, 30, 39, 48 posting means is adapted to receive a message posted through the computer network corresponding to a lot and to post the message (see figure 5).

Specifically as to claim 23, 31, 40, 49 wherein the message is a text message (see figure 4).

Specifically as to claim 24, 32, 33, 41, 42, 50, 51 the bid receiving means is for receiving bids on at least two lots (see figure 8).

Specifically as to claim 25, 34, 43, 52 proxy bidding means for automatically generating for the portion of the lot a subsequent bid based upon an initial bid provided by a bidder (see figures 11 and 12).

Response to Arguments

Applicant's arguments, see page 9, lines 13-22, filed 1/14/05, with respect to the rejection(s) of claim(s) 18-52 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art, Woolston (US5845265), as applied in the above rejection

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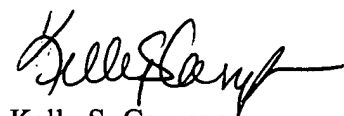
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nahan et al. (US 5664111) disclose a computerized, multimedia, network, real time, interactive marketing and transactional system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Campen whose telephone number is (571) 272-6740. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kelly S. Campen